

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 55 – SB 120

May 9, 2017

**SUMMARY OF ORIGINAL BILL:** Enacts the Organized Retail Crime Prevention Act, creating two new theft offenses for the purpose of prosecuting individuals that return stolen merchandise to receive money or store credit.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$88,300/Incarceration\*

Increase Local Revenue – Exceeds \$20,000

Other Fiscal Impact – The proposed legislation could increase state and local sales tax revenue collections by deterring individuals from returning stolen merchandise to a retailer for store credit, which will include the estimated sales tax that would have been paid on the item. However, given the extent of unknown variables, any increase in sales tax revenue cannot be quantified with reasonable certainty.

**SUMMARY OF AMENDMENTS (008334, 008742):** Amendment 008334 deletes and rewrites the proposed legislation to clarify that “stored value card” does not include a prepaid card usable at multiple, unaffiliated merchants or at automated teller machines and to remove the enhancement for a defendant that organized, supervised, financed, or managed activity of one or more other persons in furtherance of the offense prescribed by the proposed legislation.

Amendment 008742 deletes subsection (d) of section 1 of the bill as amended which authorized the trier of fact to infer a violation of the proposed legislation if a person received, possessed, or purchased 10 or more stored value cards in a 14-day period from the same individual or merchant.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Increase Local Revenue – Exceeds \$20,000

Other Fiscal Impact – The proposed legislation could increase state and local sales tax revenue collections by deterring individuals from returning stolen

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**merchandise to a retailer for store credit, which will include the estimated sales tax that would have been paid on the item. However, given the extent of unknown variables, any increase in sales tax revenue cannot be quantified with reasonable certainty.**

Assumptions for the bill as amended:

- Title 39, chapter 14, part 1 includes various sections criminalizing conduct committed against property, including theft and theft of property involving merchandise.
- The proposed legislation enacts the Organized Retail Crime Prevention Act (“the Act”), which adds a new section to title 39, chapter 14, part 1. The Act creates two new offenses for:
  - Working with one or more persons to commit theft of any merchandise with a value exceeding \$1,000 aggregated over a 90-day period with the intent to sell the property for monetary or other gain, or to fraudulently return the merchandise to a retail merchant; or
  - Receiving, possessing, or purchasing any merchandise or stored value cards obtained from a fraudulent return with the knowledge that the property was obtained in violation of § 39-14-103 (theft) or § 39-14-146 (theft of property involving merchandise).
- The Act defines “stored value card” as any card, gift card, instrument, or device issued with or without fee for the use of the cardholder to obtain money, goods, services, or anything else of value. These include debit cards issued for use as a stored value card or gift card, and an account identification number or symbol used to identify a stored value card.
- Tennessee Code Annotated § 39-14-105(b) allows for the aggregation of multiple thefts to determine the value and grade of the theft if the criminal acts arise from a common scheme, purpose, intent, or enterprise. The Act requires that the offense involves merchandise with an aggregated value of over \$1,000 and with the intent to profit.
- It is assumed that the new offenses created by the Act will not create any additional admissions that would not already be criminal under the current code.
- The Act will not create any new felony cases for the courts, district attorneys, or public defenders. It is assumed that the courts, district attorneys, and public defenders can accommodate the impact to their caseloads within their existing resources.
- The proposed legislation could deter some individuals from returning stolen merchandise to a retailer for store credit. When a person returns stolen merchandise, the retailer gives store credit in an amount not just equal to the price of the item, but the price plus any sales tax that would have been paid on the item. In these cases, the retailer will withhold this sales tax from its remittance to the state on the assumption that the sales tax was paid when the item was presumably purchased.
- To the extent the proposed legislation deters individuals from returning stolen merchandise to a retailer for store credit, the proposed legislation will increase sales tax collections. However, given the extent of unknown variables, any increase in sales tax revenue cannot be quantified with reasonable certainty.

- The proposed legislation authorizes the forfeiture of any interest in property acquired. Information from local law enforcement agencies indicate that thousands of dollars of store value cards are seized every year.
- It is standard procedure to make an attempt to return the cards to the retailer. However, many retailers will donate or forfeit the card over to law enforcement.
- The proposed legislation would authorize law enforcement agencies to institute forfeiture actions and collect the value of the cards as revenue.
- It is assumed that the proposed legislation will increase recurring local revenue by an amount estimated to exceed \$20,000 per year.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm